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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
Northern Division

HAROLD KELLY MURPHY,

Plaintiff,

vs.

SOUTHERN ENERGY HOMES, INC.,
et al,

Defendants.

Case No.:
2:06-CV-618-MEF

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Videoconference
Deposition of Dr. Robert L. Kondner, P.E.
Washington, D.C.
Friday, December 21, 2007
10:00 a.m.

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Job No. 22-118855

Pages 1 - 174

Reported by: Laurie Bangart-Smith

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Deposition of
Dr. Robert L. Kondner, P.E.

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Held at the offices of:

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L.A.D. REPORTING
1100 Connecticut Avenue
Suite 850
Washington, D.C. 20036
(800)292-4789

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Taken pursuant to the Federal Rules of Civil
Procedure, by notice, before Laurie
Bangart-Smith, Registered Professional Reporter
and Notary Public in and for the District of
Columbia.

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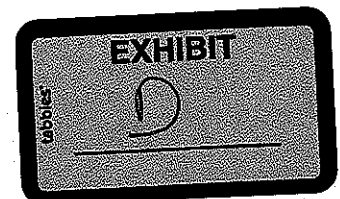
A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

JON D. PELS, ESQUIRE

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P R O C E E D I N G S

MR. SIMPSON: The usual stipulations okay, Jon?

MR. PELS: That's fine, Scott. Do you mind if I just interpose a quick objection?

MR. SIMPSON: Sure.

MR. PELS: Okay. Just on the -- I noticed the duces tecum. I know we've got Beasley Allen involved and I'm involved. We just got the duces tecum part of this deposition, so I object based on timeliness and some of them are overbroad.

That said, we believe you have the learned treatises, a lot of those documents with you, but I had him bring everything related to this case I think that's possibly responsive. We had them brought today, and I thought, you know -- like you said, I think we'll be able to work it out, but I just wanted to put that out there.

MR. SIMPSON: Okay. Well, for the record,

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this is the second time this Notice has been served, and I think you had notice of it for about three or four weeks, but that being said, I trust we can work it out and we won't have any

problem.

MR. PELS: Okay.

DR. ROBERT L. KONDNER, P.E.,
having been first duly sworn, testified upon his oath as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. SIMPSON:

Q Dr. Kondner, we have not met before today, I don't think.

A No, not that I recall.

Q All right. I'd like to start with some background information from you if I may, sir.

MR. SIMPSON: Do you have a -- Jon, do you have a CV or something on your side you could attach as an exhibit for the deposition?

THE WITNESS: I don't know whether I brought one or not. It's the same thing for the Deese deposition, exactly the same.

MR. SIMPSON: All right. Madam Court Reporter, will you do me a favor. Do you have the deposition notice for this case?

MR. PELS: I brought it, Scott.

MR. SIMPSON: All right. May I ask that

that be attached as Exhibit 1.

(Discussion was held off the record.)

MR. SIMPSON: I will have my legal assistant provide that, Laurie, to you at another fax that you can give me later, and we can just agree to call that Exhibit 1 if that's all right.

(Exhibit No. 1 was marked for identification and attached to the deposition transcript.)

BY MR. SIMPSON:

Q Dr. Kondner, would you give me a brief discussion of your professional history, starting with your most recent job.

A The most recent job?

Q Yes.

A Well, yesterday I -- I'm self-employed.

Q Okay.

A Yesterday I went out and proof-rolled a construction site in East Baltimore. Let's see.

Q What sort of professional employment have you had in your career?

A Well, I've been a professor at Johns Hopkins, Northwestern, University of Maryland, a professor of engineering physics at Louisville

College, and I've worked at the universities since receiving my degrees. I've done research, nuclear weapons effects, U.S. Army Corps of Engineers, various highway projects, and that type of thing.

Q How long were you practicing in academia?
How many years?

A Well, probably since the 1950s, somewhere in the 1950s.

Q May I ask your date of birth and your Social Security number, please, sir.

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A The date of birth is 8/9/32.

MR. PELS: I'll let him give you the Social. For the record, in Federal Court, at least up here, that information is not to be disseminated, for obvious reasons, so . . .

MR. SIMPSON: No, that's fine. I agree.

THE WITNESS: Give it to him?

MR. PELS: If you don't mind.

THE WITNESS: I don't care. It's

219-28-1395.

BY MR. SIMPSON:

Q Don't take offense at any of these questions. Have you ever been arrested in your life?

MR. PELS: Objection.

You can answer.

THE WITNESS: No.

BY MR. SIMPSON:

Q Any bankruptcies?

A No.

Q Have you ever worked outside of academia other than for yourself as a consultant?

A I don't think so.

Q And how many lawsuits have you consulted on in your professional career?

A You mean cases that have been settled or ones that have gone to court?

Q Just all the times lawyers have hired you to be an expert witness. I just would like your judgment as to how many cases that would be.

A I don't know. Maybe 50, 40, somewhere in that ballpark.

Q And were those all in recent years, or has that been over the 50 plus year career that you've had?

A It's been over the career.

Q The gentleman seated next to you, Mr. Pels;

how do you know him?

A I worked with him on a suit dealing with manufactured housing.

Q And was that a case involving soil anchor systems and issues related to tie-downs?

A Partly.

Q What else was it involving?

A Support. Footing support. Pier support.

Q Basically it was a series of cases involving the way mobile homes are affixed to the ground, correct?

A Affixed to the ground and the effects of affixing it to the ground.

Q And how many actual cases was that?

A I think that might have been three.

Q All right. How much money have you received from the Pels firm and/or the Beasley firm in connection with any litigation?

A Gee, I don't really know. I would have to go back and examine that, come up with a figure.

MR. SIMPSON: Jon, can we have an agreement, since that's sort of standard Rule 26 stuff, to have you supplement that in the next week or ten

days?

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2 MR. PELS: Absolutely. Can you get it to me
3 in that time frame?

4 THE WITNESS: Sure.

5 MR. PELS: Yes.

6 MR. SIMPSON: Okay, thank you.

7 MR. PELS: Sure.

8 BY MR. SIMPSON:

9 Q Dr. Kondner, other than the three tie-down
10 cases -- I'm going to call those "tie-down cases" if
11 that's okay -- that you worked on with the Pels firm,
12 how many other manufactured housing cases have you
13 worked on in your career?

14 A I don't know that I've worked on any. There
15 may be some buildings that -- houses that I have done
16 pre-construction surveys on that may have been
17 manufactured housing.

18 Q How many homes have you been retained to
19 give opinions on or to evaluate in connection with
20 this series of litigation? And by that I mean the
21 wallboard litigation.

22 MR. PELS: I'd object to the
23 characterization, form and foundation of

0012 wallboard, but you can answer.

1 MR. SIMPSON: Jon, if we can agree on a
2 term, I don't care what we call it. I just want
3 him to understand where I'm coming from.

4 MR. PELS: Okay. Maybe we can call it the
5 "hot humid climate litigation."

6 MR. SIMPSON: Okay.

7 THE WITNESS: As far as I am aware, it's the
8 three: Deese, Murphy and Ford.

9 BY MR. SIMPSON:

10 Q Have you been paid any money in connection
11 with those cases?

12 A Deese, but I don't know how much it adds up
13 to.

14 Q How do you charge? What's the basis of your
15 fee?

16 A I go by an hourly basis.

17 Q And what is your hourly rate, sir?

18 A It's \$150 an hour unless it's involving
19 litigation. Then it's double.

20 Q Are you currently a professional engineer?

21 A Yes.

22 Q In what states are you licensed currently?

0013 1 A State of Maryland.

2 Q Have you ever traveled to Alabama in your
3 career?

4 A Yes, I have.

5 Q When?

6 A Well, I know I've worked on a project in
7 Mobile and Montgomery, and I've worked on some things
8 that are defense-oriented over the years related to
9 things at Huntsville and some of the testing labs for
10 equipment in nuclear power plants.

11 Q Have you ever traveled to Alabama in
12 connection with the hot and humid climate litigation?

13 A This particular litigation? No.

14 Q Have you seen any of the homes that you've
15 rendered opinions on in the hot and humid climate
16 litigation?

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17 A I have not personally seen any of them.
18 Q Have you seen or relied on any other expert
19 reports in connection with the opinions you intend to
20 rely on in the Murphy case?

21 A Yes.

22 Q Which reports have you seen and do you
23 intend to rely on?

0014

1 A Bobby Parks' report.

2 Q Which one? He has two. Are you aware of
3 that?

4 A He has two that I'm aware of in the Ford
5 case, and I'm aware of one in the Murphy case.

6 Q So you've only seen his first report in
7 Murphy?

8 A Yes. Well, it's either the first or the
9 second, but I haven't seen two of them.

10 Q Okay. Is it fair to say that you have
11 relied on his opinions in rendering yours?

12 A I've relied on his findings.

13 Q What specific findings have you relied upon
14 in rendering your opinions?

15 A Well, I'd have to go through his report to
16 pick out everything, but if you want a
17 generalization . . .

18 Q I'm not going to pin you down. I just want
19 to know what impressions you came away from his report
20 with that you think are relevant to yours.

21 A Well, the Murphy report is that there is
22 moisture within the walls, at least some of the walls,
23 and that there's mold growth within the walls.

0015

1 Q Do you know how Mr. Parks determined there
2 was excess moisture in the walls?

3 A He used a moisture meter.

4 Q Do you know what relative readings he
5 reached?

6 A In the Murphy case?

7 Q Yes, sir.

8 A I'd have to look at the report. I think
9 he -- it's either the Ford report or the Murphy report
10 I think he's got moistures as high as I think
11 30 percent.

12 Q Do you know if that's a relative or absolute
13 moisture content?

14 A I'd have to go back and look at his report.

15 Q Why don't you do that, because I've got some
16 questions about that. I e-mailed all of your side's
17 reports to you guys last night and yesterday afternoon
18 to make sure you had them.

19 MR. PELS: Oh, yeah. Scott, for the record,
20 I think you e-mailed us the Deese report. I
21 don't know if you got our reply e-mail.

22 MR. SIMPSON: Well, on Kondner's report, but
23 I thought you had all the Murphy stuff.

0016

1 MR. PELS: We did, no, but I'm talking
2 about, you know, Kondner's, I think you guys
3 accidentally sent us his Deese report.

4 (Discussion was held off the record.)

5 BY MR. SIMPSON:

6 Q Dr. Kondner, let me refer you to Page 3 of
7 Mr. Parks' report.

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8 A Okay. Right down at the bottom --
9 Q Before we get into that, do you have any
10 idea what Mr. Parks' professional credentials are that
11 would give him the ability to render expert opinions
12 in court?

13 A As far as I know, it's experience, his
14 experience.

15 Q Do you know what kind of education he
16 possesses?

17 A No, I do not.

18 Q If I told you he was a high school graduate,
19 would that surprise you?

20 A No.

21 Q If I told you he didn't have any college or
22 professional credentials such as yourself, would that
23 surprise you?

0017

1 MR. PELS: Objection to form and foundation.
2 You can answer.

3 THE WITNESS: No. An expert is by virtue of
4 education and training or experience or a
5 combination thereof.

6 BY MR. SIMPSON:

7 Q Have you met Mr. Bonney?

8 A Yes, I have.

9 Q Do you know what sort of education he
10 possesses?

11 A No, I do not.

12 Q How many times have you met Mr. Parks?

13 A Two or three, I think.

14 Q And what's the sum total of your encounters
15 with him? How long did you spend talking to him?

16 A Oh, talking to him and in discussions with
17 him, maybe -- and experience in the field with him,
18 several days, I guess.

19 Q What experience in the field have you had
20 with Mr. Parks?

21 A I was in a manufactured unit in the general
22 Baltimore area where he measured and took photographs
23 and -- measured temperatures and took his photographs.

0018

1 Q Was that a moisture-related case?

2 A That was -- well, there's moisture, but it's
3 not necessarily a moisture-related case. It's a
4 support case, tie-down and pier footing.

5 MR. PELS: Scott, if you want, I can help
6 you out, but I don't want to -- I can interject
7 what we used him for.

8 MR. SIMPSON: No, that's okay. Go ahead.

9 MR. PELS: The tie-down, what you were
10 calling the tie-down case, the foundation case,
11 part of it is the impact it has on the actual
12 structure of the home as well, and so Dr. Kondner
13 was talking about Bobby Parks was one of -- we
14 had about nine or ten experts, I think, in that
15 case, but he was one of them, to show kind of the
16 structural deterioration of the walls, et cetera,
17 related to the installation issues.

18 MR. SIMPSON: Okay.

19 BY MR. SIMPSON:

20 Q Dr. Kondner, have you had any field
21 experience with Mr. Parks or Mr. Bonney in the series
22 of cases I'm questioning you about today, the hot and

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23 humid climate cases?

0019

1 A Field experience with them on those? No,
 2 because I have not been to Alabama and I did not see
 3 the particular house.
 4 Q When's the last time you've been to Alabama?
 5 A I really don't know. I could probably give
 6 you an estimate. Probably about ten years ago.
 7 Q Let me refer you to Page 3 of Mr. Parks'
 8 report. Down at the bottom of the report do you see
 9 where he's catalogued his moisture readings there?
 10 A Yes.
 11 Q Okay. Do you have a judgment as to whether
 12 those are absolute or relative moisture readings?
 13 A He says, "Typical moisture content within
 14 the interior partition walls of this home were in the
 15 ten percent, 12 percent range. Consistent readings
 16 within Murphy's perimeter gypsum walls were in the
 17 25 percent to 40 percent range."
 18 He doesn't specify it, but moisture content
 19 means moisture content. To me it's an absolute value.
 20 Q So you think those are absolute values?
 21 A I think they are. I haven't seen anything
 22 other than that, unless he defines it in here a little
 23 better.

0020

1 Q Do you know how one is supposed to obtain
 2 absolute moisture values in gypsum? Do you know what
 3 process a person goes through to do that?
 4 A I don't know the specific -- I would think
 5 one would have to take a sample of the material.
 6 Q And do what with it?
 7 A Determine its moisture content.
 8 Q How would you do that, though? What do you
 9 physically do?
 10 A You physically would have to take it and
 11 heat it, weigh it, weigh it natural, the way you've
 12 taken a sample. Then you would heat it and then you
 13 would reweigh it, and you would take the -- there are
 14 numbers of different moisture contents, and in some
 15 engineering work it's done different than in others.
 16 In geotechnical work you can have moisture contents
 17 that can be greater than a hundred percent. In a
 18 geologic sense or as people would normally think of
 19 moisture content, the maximum you would have would be
 20 a hundred percent. So, therefore, it would be a
 21 ratio, it would be a ratio of the water to the total
 22 weight.
 23 Q So is it your opinion that he did that here?

0021

1 A I assume he used a meter here. Now, I don't
 2 know the details of the meter nor how the meter is
 3 calibrated or anything of that sort.
 4 Q Can you get a good absolute moisture reading
 5 from a meter?
 6 A No.
 7 MR. PELS: I'm going to object. Dr. Kondner
 8 is not here to opine about moisture meter
 9 readings.
 10 MR. SIMPSON: Well, he's relied on this
 11 report, so I have a right to know what he knows
 12 about it.
 13 MR. PELS: And I'm going to let him answer,

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14 but I'm going to interpose that objection.

15 MR. SIMPSON: Okay.

16 BY MR. SIMPSON:

17 Q So do you know whether this is an absolute
18 or relative, or are you just guessing?

19 MR. PELS: Objection; form and foundation.
20 You can answer.

21 THE WITNESS: Well, if it's relative, it has
22 to be relative to something, and he hasn't
23 specified here what that relative is.

0022

1 BY MR. SIMPSON:

2 Q So which is it, Doctor; is it relative or
3 absolute?

4 A He doesn't define it.

5 Q Well, what did you take away from the
6 report? What do you think it is?

7 A Well, whether it's absolute or relative, the
8 value in the gypsum, the perimeter gypsum walls is two
9 to three times greater than in the interior
10 partitions. So in that sense it would be a relative,
11 but it's two to three times higher. That's
12 significant.

13 Q Well, is it absolute or relative? Can you
14 give me an answer on that?

15 A It doesn't make any difference.

16 Q I don't care whether it makes a difference.
17 I want to know what you think this report says. Is it
18 absolute or relative?

19 MR. PELS: Objection; asked and answered.
20 You can answer again.

21 THE WITNESS: I don't know.

22 BY MR. SIMPSON:

23 Q Okay. Let me ask you this: Are you aware

0023

1 of any scale promulgated by the gypsum industry or any
2 other authoritative source which sets forth a standard
3 which says X amount of moisture is too much or not
4 enough or just right?

5 A I'm not aware of that standard.

6 Q Is it a fair statement to say that you can't
7 say with any degree of scientific certainty that the
8 numbers that Mr. Parks recorded in this report
9 relative to moisture don't violate any standard of
10 care that you know of?

11 MR. PELS: Objection; form and foundation,
12 asked and answered. He's already said it's two
13 to three times higher.

14 You can answer again if you want.

15 MR. SIMPSON: Jon, please don't coach him.

16 BY MR. SIMPSON:

17 Q Do you know whether these numbers violate
18 any standard of care?

19 A Well, in looking at these numbers and
20 realizing that the perimeter gypsum walls are two and
21 a half to three times more than they are on the
22 interior partitions of the wall and the fact that he
23 has detected mold growth within the walls tells me

0024

1 that there is a problem here with moisture, and the
2 values tell you that.

3 Q Well, first let me ask you this: Do you
4 know whether the ratio is direct, whether it's a

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5 linear number or whether it's non-linear, when you go
6 from one wall to the next on a relative or absolute
7 scale?

8 A Well, either way. Either way. Look. Ten
9 percent and 25 percent, okay, that's two and a half
10 times in the perimeter walls. Now, I don't care
11 whether it's relative or absolute. It's two and a
12 half times higher. You can't dispute that.

13 Q Sir, isn't that the case if the numerical
14 relationship is linear?

15 A Why would it be --

16 Q Do you know the difference between linear
17 and non-linear?

18 A Oh, I certainly do.

19 Q All right. If the relationship is
20 non-linear, you can't say it's two and a half times,
21 can you?

22 A What do you mean "non-linear"? I don't
23 think it's non-linear.

0025

1 Q Do you have any basis to say that?

2 A Well, he's given me moisture contents. If
3 he had some kind of special scale that he's measuring
4 these moisture contents on, he would have had to put
5 that in here. It doesn't say it, so, therefore, the
6 only conclusion you can come to is that they are
7 linear.

8 Q So you think it's linear?

9 A Yeah. Yes, I do. I think it's two and a
10 half times higher for the ten percent and the
11 25 percent. The 12 percent and the 40 percent, that's
12 over three times higher.

13 Q Other than the relationship from the
14 interior to the exterior walls and your problem with
15 that, is there any other authoritative source you can
16 cite me to that would stand for the proposition that
17 any of these numbers are a violation of any standard
18 of care anywhere?

19 A Well, the fact that he has detected mold,
20 fungal growth, within these walls shows that there is
21 a problem with this moisture on the interior gypsum
22 walls.

23 Q We'll get to the mold in a minute. I want

0026

1 to get my question answered. Are you aware of any
2 standard which provides that ten percent, 12 percent,
3 25 or 40 percent moisture is a violation of any
4 standard of care? I just want to get that question
5 answered.

6 MR. PELS: Objection.

7 You can answer.

8 THE WITNESS: I think the fact that they're
9 two and a half to three times greater, that ratio
10 says to me that there is something wrong here
11 with the standard of care.

12 MR. SIMPSON: Jon, will you please instruct
13 the witness to answer my question. We're going
14 to be here all day if he keeps being evasive.

15 BY MR. SIMPSON:

16 Q I just want to know, sir: Are you aware of
17 any standard of care which says that any of these
18 values are indicative of failure or defect in the
19 gypsum wall industry?

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20 A How do you define "standard of care"?

21 Q Well, you tell me. Do you know what a
22 standard of care is?

23 A You tell me. You're asking the question. I
0027

1 don't know what your definition of standard of care
2 is. Which standard of care? You tell me what
3 standard of care you're talking about.

4 Q Well, that's my question to you. Do you
5 know any? Do you know any standard of care that
6 relates to gypsum and moisture content anywhere in the
7 universe?

8 A Well, in the literature that you have in
9 your possession I believe it talks about that effect.
10 I don't have it in front of me here, but go back and
11 look.

12 Q Sir, are you an expert on standard of care
13 with regard to moisture content in gypsum?

14 A No, I wouldn't say I was.

15 Q And the truth is, without going and doing
16 research, you don't know sitting here today whether
17 any of these ranges of moisture violate any standard
18 of care, correct?

19 MR. PELS: Objection; form and foundation,
20 mischaracterization.

21 You can answer.

22 THE WITNESS: It is my opinion that when you
23 have these moisture contents that are two to
0028

1 three, two and a half to three times difference
2 between an interior wall and a perimeter wall,
3 that you've got a problem with moisture, and the
4 fact that you've got mold growth just
5 substantiates it. You don't get the mold growth
6 unless you have a standard of moisture which
7 exceeds some authoritative value.

8 BY MR. SIMPSON:

9 Q Doctor, we'll get to your mold opinion in a
10 minute.

11 A The two go together.

12 Q I want to get an answer to my question.

13 MR. SIMPSON: And Jon, I'd ask you to
14 instruct your witness to answer. It's not hard.

15 BY MR. SIMPSON:

16 Q I just want to know: Are you aware of any
17 standard of care in the industry which provides that
18 any of these ranges of moisture content violate a
19 known standard of care. Yes or no; do you know?

20 MR. PELS: Let me object. I mean, Scott, I
21 think he's answering your question based on what
22 he believes, and . . .

23 MR. SIMPSON: Jon, he is just giving me
0029

1 garbage about what he thinks Bobby has said. I
2 want to know what he thinks is an authoritative
3 source that provides that any of these ranges
4 violate any standard of care, and I'd like my
5 answer.

6 MR. PELS: Well, Scott, first of all, I
7 don't think he's giving you "garbage." I object
8 to that term, and, you know, he's relying on
9 Mr. Parks' and Bonney's reports, and he's telling
10 you what his opinion is based on that, and, you

kondnerdr.txt

11 know, he's here to give you the physics of what's
12 happening in these walls.

13 BY MR. SIMPSON:

14 Q Well, I still want my answer. Tell me what
15 standard of care any of these moisture readings
16 violate, sir, and I don't want to hear because they're
17 related to each other. I want to know authoritative
18 treatise, book, page, anything you're aware of sitting
19 here today right now.

20 MR. PELS: Well, Scott, again he did say
21 that you have in possession all those learned
22 treatises that we provided you.

23 MR. SIMPSON: Jon, I'm not going to go play

0030

1 hide the peanut with your 80-page exhibit. I
2 want to know what this witness knows, and I'm not
3 going to sit here and let him go read for an
4 answer. He either knows the answer or he doesn't
5 know the answer.

6 MR. PELS: I don't think that's fair.

7 BY MR. SIMPSON:

8 Q What is the answer?

9 MR. PELS: Scott, let's compare him to some
10 of the responses I've gotten from your experts
11 which were way worse, including your 30(b)(6).
12 The fact of the matter is he's giving you
13 answers. You may not like the answers, but he's
14 providing you with his answers. I don't know
15 what else you want him to do.

16 BY MR. SIMPSON:

17 Q First of all, there has been no 30(b)(6) in
18 this case, and I resent your accusation. Secondly,
19 I'd like to know, Dr. Kondner, what standard of care
20 says that 10, 12, 25 or 40 percent moisture readings
21 is a problem. I'm waiting for your answer.

22 MR. PELS: I'm going to object for the
23 record and let him answer again if he wants.

0031

1 THE WITNESS: I would say the 25 to
2 40 percent range is poor.

3 BY MR. SIMPSON:

4 Q And what authoritative work are you relying
5 on for that statement?

6 A I can't quote you an authoritative source.
7 That's my feeling based on my experience. That's my
8 answer to your question.

9 Q Do you know what "ASTM" stands for?

10 A Yes, I do.

11 Q What does it stand for?

12 A American Society of Testing Materials.

13 Q Do you know what, if any, ASTM standard
14 applies to moisture content in gypsum?

15 A I can't quote you a standard. If you'd like
16 to show me one, I'd be happy to read it and translate
17 it for you.

18 Q You don't know if there even is one, do you?

19 A I think there probably is one. There are
20 many of them. There are whole volumes of them.

21 Q Have you ever had direct experience with one
22 that relates to moisture content?

23 A Any specification that relates to moisture

0032

1 content?

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2 Q ASTM standard in gypsum.

3 A Oh, in gypsum. I can't recall any. I may
4 have seen it; I may not have seen it. I don't know.

5 Q Are you aware of any other ASTM standards
6 that are utilized for testing the integrity of gypsum
7 products?

8 A No, I'm not, but I -- in some of the
9 literature I looked at, I know that there is one that
10 deals with that, because I've seen it, but I don't
11 recall the details.

12 Q Do you know what a nail pull test is?

13 A A nail pull test?

14 Q Yes, sir.

15 A Well, it obviously has to do with the
16 resistance -- I don't know the spec, but I would think
17 that if that's the title of it, then it must be the
18 force to pull out a nail.

19 Q Are you guessing?

20 A That's just my opinion.

21 Q Have you ever -- do you have any familiarity
22 with any nail pull test in the gypsum industry?

23 A No, I haven't.

0033

1 Q Do you have any familiarity at all with a
2 test dealing with compaction or compression in the
3 gypsum industry?

4 A Not in the gypsum industry.

5 Q Do you have any familiarity with anything
6 called a flex test in the gypsum industry?

7 A No, but I've experienced other flex tests.

8 Q Hypothetically speaking, if we removed a
9 large area of exterior wallboard from the exterior
10 wall from this home and had it tested by an ASTM
11 approved lab, and that lab came back with testing
12 results saying that the gypsum was in very good
13 condition, no problem, could you explain that kind of
14 result in relation to what Mr. Parks has said?

15 MR. PELS: Objection to form and foundation.

16 Also can you be more specific about the time
17 frame limitation?

18 THE WITNESS: How about the test, type of
19 test?

20 BY MR. SIMPSON:

21 Q The test I just described.

22 A I'd like to have more details of it, such as
23 the sample, the dimensions, the loading, the loading

0034

1 frame, the deflections. Apparently you don't know any
2 of that.

3 Q The fact is, sir, you're not even familiar
4 with any of those tests, are you?

5 A Not on gypsum.

6 Q So you wouldn't be an expert on that, would
7 you?

8 MR. PELS: Objection.

9 BY MR. SIMPSON:

10 Q Sir?

11 A But if I were given the results and if I
12 were given the tests and a test form, I sure could
13 analyze it and give you some results on it, because it
14 goes to basic engineering properties. It goes to the
15 rheologic properties of the material, the way the test
16 is performed, whether it's static, dynamic, so forth,

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17 and I certainly could interpret that for you.
 18 Q But you've never done the test, never seen
 19 it done, right?
 20 A Not that I recall.
 21 Q Now, you're not a mold expert, are you?
 22 A No, I wouldn't classify myself as a mold
 23 expert.
 0035
 1 Q Have you had any specialized training in
 2 mold?
 3 A No, I don't believe so. I try to avoid
 4 mold.
 5 Q Have you ever published on any area
 6 involving mold?
 7 A No, I haven't, but I am aware that it's
 8 unhealthy.
 9 Q Do you know anything else about it?
 10 A I know it could lead to some very serious
 11 problems, including the total removal of homes that
 12 are infested with it.
 13 Q But you're not an expert?
 14 A No, I'm not an expert in it.
 15 Q In fact, if you turn a few pages more to --
 16 let's say turn to the back of Mr. Parks' report, Page
 17 3 of 6, 2 of 6, 1 of 6. Do you see those pages?
 18 A What do you want; 3 of 6?
 19 Q 3 of 6. That's fine.
 20 MR. PELS: Are you on the Galson Labs,
 21 though, Scott?
 22 MR. SIMPSON: Yes, sir.
 23 MR. PELS: Okay.
 0036
 1 THE WITNESS: I'm there.
 2 BY MR. SIMPSON:
 3 Q All right. Do you know anything about these
 4 molds on this page?
 5 A What do you mean by do I know anything about
 6 them at all? I can read the names. The names are
 7 here and the spore counts are here.
 8 Q But I'm saying are you qualified to
 9 interpret that data in any way.
 10 A Medically, no.
 11 Q Well, in any sense.
 12 A What do you mean by "any sense"? I simply
 13 look at the figures here, and some of them are quite
 14 high and some of them are negligible.
 15 Q But aren't you guessing? You don't know
 16 what high, medium or low is on any relative scale, do
 17 you?
 18 A They look high to me. I wouldn't want to be
 19 breathing those spores.
 20 Q Do you realize that Mr. Parks has testified
 21 that none of these spores are making their way into
 22 the indoor ambient air?
 23 MR. PELS: Objection; form and foundation.
 0037
 1 You can answer.
 2 THE WITNESS: Wait a minute. Living room
 3 wall cavity. I don't know that he said that
 4 they're in the interior of the house, in the
 5 living side of the house.
 6 BY MR. SIMPSON:
 7 Q Can you cite me to any standard of care that

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8 you know of which provides that any mold count or
9 concentration above a certain number violates the
10 standard of care?

11 A Oh, I would imagine there is one, but I
12 don't know it.

13 Q But you think there is one?

14 A I think there is.

15 Q Have you ever heard of the standard and
16 reference guide for professional mold remediation
17 which is designated IICRCS520?

18 A I'm not familiar with it.

19 Q Hypothetically speaking, if the court
20 excludes Mr. Parks' mold opinions from this case, do
21 you have any basis within which to render your own
22 mold opinions in this case?

23 MR. PELS: Objection; form and foundation.

0038

1 You can answer.

2 THE WITNESS: Not at present.

3 BY MR. SIMPSON:

4 Q You don't know much about the HUD code, do
5 you?

6 MR. PELS: Objection; form and foundation.

7 THE WITNESS: I'm familiar with the HUD code
8 and I've read the HUD code. If you would care to
9 point me out a section to it, I'd be happy to
10 take a look at it for you.

11 BY MR. SIMPSON:

12 Q Are you an expert in the HUD code?

13 A No. I'm an engineer, but the HUD code deals
14 with engineering.

15 Q Have you ever designed a HUD code home in
16 your career?

17 A No, I have not.

18 Q Do you know what a DAPIA is?

19 A Yeah, it's the -- let's see -- the design
20 approval of inspection, primary inspection agent or
21 agency dealing with design.

22 Q Do you know what an IPIA is?

23 A Well, that would have to be the interior

0039

1 inspection. It's an inspection.

2 Q Do you know anything about it?

3 A Such as?

4 Q Tell me what you know about it. What do you
5 know about IPIA?

6 A Well, I don't know much about it. I do
7 recall seeing it in the HUD code as well as the DAPIA.

8 Q Do you know the process from design to
9 completed construction in a manufactured home? Are
10 you familiar with that?

11 A The process from what, from design to what?

12 Q From initial design to completed
13 construction. Can you walk me through that?

14 A I would not walk you through step by step of
15 that process, but that is a construction process, and
16 in that construction process you have to have various
17 inspections. You have to meet certain criteria. You
18 have to meet these HUD code requirements.

19 Q Do you have any specific information other
20 than just your speculation on that?

21 MR. PELS: Objection; form and foundation.

22 You can answer.

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THE WITNESS: That's professional

23
0040

1 experience. I mean when you build something, I
2 don't care if's a building, a stick building or
3 whatever it is, you're going to have inspections.
4 You've got to meet codes.

5 BY MR. SIMPSON:

6 Q Tell me what they are in a manufactured home
7 setting.

8 A Go look at the HUD code and you'll find it.

9 Q Sir, you've been tendered as an expert. I
10 get to ask you what you know about it, and it doesn't
11 sound like you know much.

12 MR. PELS: Objection; form and foundation,
13 characterization.

14 THE WITNESS: I'm not a HUD code expert, but
15 I am an engineer, and there is engineering that's
16 performed in this process, and that's the thing
17 that I'm here to look at, not to memorize an inch
18 worth of codes, but to look at engineering
19 aspects as they apply to that. If you want to
20 ask me questions about that, specific questions,
21 go ahead.

22 BY MR. SIMPSON:

23 Q Well, I intend to.

0041

1 A Please do.

2 Q What, if any, HUD code violations do you
3 find in this particular home?

4 A We're talking about the Murphy home?

5 Q Yes, sir.

6 A Well, you've got vinyl on the inside surface
7 of the wall, and you've got air -- that's one, that's
8 the type of wall that they selected, according to the
9 504 in the code. Okay. Now, in this particular
10 instance you've got hot, moist, humid air that is
11 penetrating through the walls. It gets to the back of
12 the interior wall. It cannot penetrate through
13 because of the vinyl covering, and therefore it
14 condenses, because that inside is cooler than the
15 outside air. It condenses, and you get water
16 accumulating.

17 Q Can you tell me specifically what HUD code
18 provisions the Murphy home is out of compliance with.
19 Just give me a list.

20 A Out of compliance with? Well --

21 Q Yeah.

22 A -- somebody has made a decision as to the
23 type of wall to build, and it's going out into the

0042

1 field and it's not performing.

2 Q Which HUD code provision do you think is
3 violated in that sense?

4 A Well, I think it's -- the manufacturer has
5 made a choice under the 504, and I think the failure
6 is under the 303.

7 Q So you think that 3280.303 is violated?

8 A It doesn't perform.

9 Q Is that your judgment?

10 A It doesn't perform. If you've got water
11 condensing on the inside of the wall, it's not
12 performing.

13 Q Sir, let's see if you can stick to my

kondnerdr.txt

question. My question is: Just give me a list of the HUD code provisions which you think are violated in this particular home.

A Well, let me pull out the HUD code here and take a look.

Q You don't know without looking?

A Yeah, I know. I just told you. Now you want details on it.

Q Just give me a list. Just start with a list, one, two, three, four, however many you got.

1 what HUD code, what provision is violated here?

2 A Well, under 504 you've got a choice. You've got a choice under 504.

3 Q What version of the HUD code are you looking at?

4 A I'm looking for a date. Don't see a date. Okay, here we go. It says -- it's maybe '93. I don't know. I don't see a date on the outside of it.

5 Q Do you know what year this home was manufactured?

6 A Offhand I don't recall. I'd have to look at it.

7 MR. PELS: Scott, do you want him to still answer about the sections of the HUD code?

8 MR. SIMPSON: Yeah, I'll get back to that. I want to try to figure out what he's looking at.

9 MR. PELS: I don't think he's got the B4. That's a pre-HUD code thing. I think we gave it to him a couple years ago. I'll see if I can see a date on it, but . . .

10 MR. SIMPSON: That's okay. Don't worry about it. Let's just keep going.

0044 1 BY MR. SIMPSON:

2 Q Do you know what year this home was manufactured?

3 MR. PELS: He's looking at it.

4 THE WITNESS: I'm looking to see what the plate had on it. It would be in Bonney's report, because Bonney has seen it and I haven't.

5 BY MR. SIMPSON:

6 Q Where is the data plate in a home; do you know?

7 A It's -- let's see. I'm just trying to think where it's located. It has to be in there. It has to be located in there, and I don't recall where it is. Date of manufacture. Here it is. January 9, '03.

8 Q What's a data plate look like?

9 A Well, I've seen them. It's so big and it's got the information on it, the number of the unit and so forth, and the date of the manufacture, the manufacturer.

10 Q Dr. Kondner, what design choices did Southern Energy have available the year this home was manufactured relative to wall design?

11 A Well, you certainly had -- you certainly had

12 the material here in 504, and it could have been ventilated. You could have had an exception. You could have --

13 Q Let's start with ventilated. What HUD code

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5 section is that?

6 A That's 504(b)(2), unventilated.

7 Q All right. So which one is ventilated and
8 which one is unventilated?

9 A Uh, (b)(3).

10 Q Is ventilated?

11 A Yeah.

12 Q Okay. Can you tell me for the record what a
13 (b)(3) wall looks like.

14 A Well, you would have to have some kind of an
15 air flow within that wall structure. It says right
16 here, "wall cavities shall be constructed so that
17 ventilation is provided to dissipate any condensation
18 occurring in the cavities."

19 Q So what's it look like? Have you ever laid
20 eyes on one?

21 A I don't know that I have or haven't.

22 Q Have you ever seen a (b)(2) wall?

23 A (b)(2) wall, unventilated wall cavity.

0046

1 Well, I don't know that I've ever torn any of them
2 apart. I don't know that I've ever seen any of them
3 cut open if that's what you're asking.

4 Q Have you ever seen a (b)(2) wall anywhere in
5 the world?

6 A Unventilated wall cavity --

7 Q This shouldn't be hard. You're supposed to
8 be the expert on this. Have you ever seen a mobile
9 home with a (b)(2) wall?

10 MR. PELS: Objection; move to strike the
11 soliloquy.

12 THE WITNESS: I don't know that I have or
13 haven't, quite frankly.

14 BY MR. SIMPSON:

15 Q Have you ever seen a (b)(1) wall?

16 A Yes.

17 Q Where?

18 A In units here in Maryland.

19 Q Tell me what the Murphy wall is constructed
20 with. Go from the inside to the outside of the wall
21 and give me each layer.

22 You're not going to find that on any of the
23 papers you're shuffling around.

0047

1 A Well, it should be in Bonney's report, I
2 would think.

3 Q I want to know what you know, not what
4 Mr. Bonney knows.

5 A I haven't seen it. I haven't been down
6 there. I haven't looked at it.

7 Q But you're an engineer. You're an expert.
8 What's the wall made of? Tell me what's in it.

9 A What's in it? I believe this is the one
10 with the vinyl siding on it.

11 Q And what's underneath the vinyl?

12 A And then you've got some wallboard.

13 Q What kind?

14 A Probably that blackboard. That's why I'm
15 looking in here. I don't know.

16 Q Do you know if it has OSB?

17 A It may.

18 Q What's OSB?

19 A It's a -- wait a minute. Hold it.

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20 Q Sir, what is OSB?
 21 A That's a board, a wallboard.
 22 Q What's it stand for, the initials?
 23 A OSB? Outside board? I don't know.
 0048
 1 Q Do you know what kind of sheeting this home
 2 has, or are you just guessing?
 3 A That's what I'm looking for. I haven't been
 4 down here. I haven't seen it.
 5 Q So you don't know sitting here without
 6 looking up what someone else says what's it made of,
 7 right?
 8 A That's right, and that's what I relied upon.
 9 Q Okay, but you don't even know what you
 10 relied upon, because you can't tell me?
 11 A I can't find it in here right now.
 12 Q What's underneath the OSB?
 13 A You got insulation in there.
 14 Q How thick is the insulation?
 15 A This particular? I don't think he's got it
 16 in here.
 17 Q I want to know what you know.
 18 A I don't know anything about the house,
 19 physical house itself, because I was never there. I
 20 have never seen it. I have to rely on Bonney's
 21 report.
 22 Q You're saying these walls are going to fail,
 23 and you can't even tell me what they're made of.
 0049
 1 A No, but I can tell you this. They got
 2 moisture contents in there from 25 to 40 percent, and
 3 you've got mold forming and you've got an accumulation
 4 of it, and the longer it goes on, the more water
 5 you're going to get in there, and eventually that
 6 gypsum board is going to fall apart, eventually.
 7 Q Sir, the truth is you have never physically
 8 seen with your own eyes any (b)(1) wall that has
 9 failed, ever.
 10 MR. PELS: Objection; form and foundation.
 11 BY MR. SIMPSON:
 12 Q And if you have, tell me where and when.
 13 A Well, it certainly isn't the one we're
 14 talking about. I don't know that I -- well, wait a
 15 minute. I'll take that back. I have seen some that
 16 have failed, and I've seen them with a mold over them,
 17 and I've seen them with the plaster board falling off,
 18 and I can tell you where. They're down by Annapolis.
 19 Q Sir, tell me one manufactured home in --
 20 A And I don't know who manufactured it --
 21 Q Answer my question.
 22 A -- but I did a preconstruction survey on it.
 23 Q Answer this question. Can you tell me of

0050
 1 one manufactured home sited in the humid or fringe
 2 zone climate that you've seen in your life that is
 3 failing from condensation.
 4 A Do you want the manufacturer?
 5 Q Just one manufactured home in your whole
 6 life that --
 7 A Well, I know a particular building, a
 8 manufactured home, and I saw the mold on it, I saw the
 9 wallboard falling apart, and somewhere I've got
 10 photographs of it.

kondnerdr.txt

11 Q Let's stick with my question.
12 A And I don't know who manufactured it,
13 because I wasn't looking for this particular type of
14 case. I was doing a preconstruction survey.
15 Q Let's stick with my question, Dr. Kondner.
16 Can you tell me about one manufactured home in your
17 life that you have physically seen in the humid and
18 fringe zone climate with a (b)(1) wall design that is
19 failing that you have seen with your own eyes. Just
20 one.
21 A Now you've restricted it a little further.
22 You were talking about this coastal hot humid climate,
23 and I haven't been down in that area looking at these

0051

1 units.
2 Q So you haven't seen even one of these fail
3 in the field in the humid and fringe zone climate;
4 that's your testimony?
5 MR. PELS: Objection.
6 THE WITNESS: Well, I've seen one of them
7 fail up here in Maryland.
8 BY MR. SIMPSON:
9 Q But we're not in a lawsuit in Maryland.
10 A No, you're not, but you asked the question
11 and I answered it.
12 Q Well, I just want to confirm. You've never
13 seen one in the field in Alabama or anywhere else in
14 the humid and fringe zone that has failed, correct?
15 A I tend to take that back, because I recall
16 in Mobile, Alabama, at a Ramada Inn where they had
17 trouble with the wallboards falling apart.
18 Q Mobile homes, sir.
19 A Well, okay. Similar type of construction.
20 Q Have you seen a mobile home fail with your
21 own eyes in the humid and fringe zone climate in your
22 life?
23 MR. PELS: Objection.

0052

1 THE WITNESS: Not necessarily a mobile home.
2 I may or I may not have, but I've seen them fail
3 and I've seen them in that climate.
4 BY MR. SIMPSON:
5 Q I want to know one you've seen fail in
6 Alabama in the humid and fringe zone climate in your
7 life, a mobile home. I don't want to hear about
8 hotels. I don't want to hear about Maryland. I want
9 to hear about a manufactured home that you have
10 physically seen and has failed.
11 MR. PELS: Objection; asked and answered.
12 THE WITNESS: I don't believe I have. I may
13 have, but I don't believe I have.
14 BY MR. SIMPSON:
15 Q Thank you. Now, is it your opinion that
16 internal moisture retarders or moisture barriers are
17 the problem in this case?
18 MR. PELS: Objection. You can answer.
19 THE WITNESS: Yes.
20 BY MR. SIMPSON:
21 Q Does it matter what kind of internal vapor
22 barrier is used?
23 A Certainly.

0053

1 Q I mean is there one better than another?

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2 A Well, you've got to look at what you're
3 trying to accomplish, and in that particular climate
4 down there you certainly don't want to put it on the
5 inside surface of a cool wall where you've got hot
6 humid air traveling through the outside structure and
7 condensing on the back side of that. You don't want
8 that. That's poor engineering judgment. Try a
9 different design. I mean they allow you different
10 designs.

11 Q Doctor, please, let's not get into speeches.
12 Just please -- I'm going to ask questions, you give me
13 answers; okay? Or we're going to be here all day.

14 MR. PELS: Objection, Scott. He was
15 answering your question. Part of the problem,
16 Scott, is you ask questions and you won't let him
17 answer. He's still not gotten a chance to answer
18 the question about the HUD code sections.

19 MR. SIMPSON: We're going to come back to
20 that.

21 MR. PELS: But you tend to cut him off
22 before he answers.

23 MR. SIMPSON: Well, I disagree with that.

0054

1 BY MR. SIMPSON:

2 Q What other method of design using an
3 internal vapor barrier can a manufacturer use other
4 than vinyl?

5 A Well, you could use the Kraft paper type or
6 you could have it discontinuous. You got to have some
7 air going through there. You got to be able to
8 dissipate that water vapor. And if you've got that
9 inside sealed off and it's a cool surface and you've
10 got hot humid air coming in, it's going to condense on
11 it. It's as simple as that. I mean this isn't rocket
12 science.

13 Q Are you aware of any studies authoritative
14 in the field which stand for the proposition that
15 internally-facing Kraft backpaper in a manufactured
16 home is a superior design choice over vinyl-coated
17 gypsum?

18 A Over vinyl-covered gypsum? It depends on
19 whether it's continuous or not. It depends on how you
20 use it.

21 Q I'm not asking for your opinion, Doctor.
22 I'm wondering if you have any authoritative studies,
23 authoritative works, authoritative treatises which

0055

1 state that vinyl-coated gypsum is not as effective in
2 manufactured homes for controlling condensation as
3 Kraft backpaper turned to the inside of the wall?

4 A Oh, I think you would find some of it in
5 that, the literature that you already have.

6 Q Well, I'm not interested in going fishing.
7 I want to know if you know sitting here today. Can
8 you cite me to any.

9 A Well, there's some in there, but I can't
10 cite it to you.

11 Q Let's go back to my HUD code question. Give
12 me a list of the HUD code provisions that you think
13 are violated in this particular home, the Murphy home.

14 A Well, somebody has made a design choice, a
15 design --

16 Q Just give me a list if you would. We can